

SYNOPSIS

Rule 111-2-2 Health Planning Certificate of Need

Rule 111-2-2-.05 Enforcement

STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE

The purpose of this proposed amendment in totality is to modify existing regulations in light of changes in the Certificate of Need statute, O.C.G.A. § 31-6 et seq., due to the passage of Senate Bill (SB) 433 in the 2008 Georgia General Assembly. SB 433 necessitates extensive revision to the existing administrative rules for certificate of need. The revisions are outlined in detail below.

DIFFERENCES BETWEEN EXISTING AND PROPOSED RULES

Various grammatical and punctuation errors and omissions are corrected throughout the existing version of the regulations.

Rule 111-2-2-.05 Enforcement.

This section is renumbered to reflect additional provisions.

Rule 111-2-2-.05(1)(a) is amended to grant the Department authority to revoke a certificate of need in whole or in part.

Rule 111-2-2-.05(1)(a)(3) is amended to expand the Department's revocation authority for failure of a certificate of need holder to implement the services or units of services for which the certificate of need was issued in a timely manner.

Rule 111-2-2-.05(1)(a)(7) is amended to add the requirement the submitted report must be timely or complete within 180 days following the date the report is due.

Rule 111-2-2-.05(1)(a)(8) adds failure to repeatedly pay any fines or monies due to the Department as a cause to consider revocation of a Certificate of Need.

Rule 111-2-2-.05(1)(a)(9) adds failure to maintain minimum quality of care standards as a cause to consider revocation of a Certificate of Need.

Rule 111-2-2-.05(1)(a)(10) adds failure to participate as a Medicaid provider as a condition of the Certificate of Need, as granted, as a cause to consider revocation of a Certificate of Need.

Rule 111-2-2-.05(2)(b) is amended to establish a graduated fine structure.

Rule 111-2-2-.05(3) is amended to add language that expands the Department's authority to conduct investigations both inside and outside the state of Georgia.

111-2-2-.05 Enforcement.

(1) Revocation.

(a) In the event that the Department has cause to consider revocation of a Certificate, in whole or in part, the Department shall provide notice to the holder of the Certificate and shall hold a hearing to determine whether the holder has:

1. Intentionally provided false information to the Department;
2. Failed to incur a financial obligation in accordance with the Certificate as granted;
3. Failed to implement the project in accordance with the specific purpose(s) for which the certificate was granted or failed to meet the initial twelve-month performance standards or failed to request an extension of such standards. For certificates issued on or after July 1, 2008, failed to implement the services or units of services for which the certificate of need was issued, and that were outlines in or on the certificate granted, in a timely manner as also outlines in or on the certificate granted, as provided by O.C.G.A. § 31-6-45(a.1);
4. Transferred controlling ownership in the facility before completion of the project without prior written approval of the Department, except as authorized by 111-2-2-.02(4);
5. Changed the defined location of the project except as allowed by O.C.G.A. § 31-6-45(a) authorizing change in location under certain conditions;
6. Failed to comply with any and all requirements or conditions of the Certificate; or
7. Failed to submit a timely or complete periodic report within 180 days following the date the report is due pursuant to O.C.G.A. § 31-6-70 and as otherwise complete and accurate periodic reports as required by 111-2-2-.04;
8. Failed repeatedly to pay any fines or moneys due to the Department;
9. Failed to maintain minimum quality of care standards that are outlined within the Certificate as granted; or
10. Failed to participate as a provider of medical assistance for Medicaid purposes if made a condition of the Certificate as granted pursuant to O.C.G.A. § 31-6-45.2(a).

(b) In the event that there is sufficient evidence to justify revocation of a Certificate, the Department shall provide written notification to the holder, which shall be effective as of the postmark date on the notification letter. Notice shall also be provided to the public, to the county or municipal authority and to the appropriate Regional Development Center. Any person whose Certificate is revoked under this rule is entitled to judicial review, pursuant to O.C.G.A. § 50-13 et seq.

(c) A person whose Certificate of Need has been revoked or denied may not reapply for a Certificate of Need for the same or substantially similar project for at least one hundred twenty (120) days from the date that the revocation or denial becomes final, at which time the person may submit a new application. For purposes of this subparagraph,

a decision revoking or denying a Certificate of Need shall become final when the time for appealing that decision expires without an appeal of such decision having been timely filed. If an appeal is timely filed, the decision is not final until the resolution of the administrative appeal, if any.

(d) A person holding a Certificate of Need may voluntarily request revocation of the Certificate without prejudice by submitting such request to the Department in writing.

(e) A health care facility which has a certificate of need or is otherwise authorized to operate pursuant to this chapter shall have such Certificates of Need or authority to operate automatically revoked by operation of law without any action by the Department when that facility's permit to operate pursuant to O.C.G.A. § 31-7-4 is finally revoked by order of the Department of Human Resources. For purposes of this subsection, the date of such final revocation shall be as follows:

1. When there is no appeal of the order pursuant to O.C.G.A. § 31-5, the one hundred and eightieth day after the date upon which expires the time for appealing the revocation order without such an appeal being filed; or

2. When there is an appeal of the order pursuant to O.C.G.A. § 31-5, the date upon which expires the time to appeal the last administrative or judicial order affirming or approving the revocation or revocation order without such appeal being filed.

The Department may become a party to any judicial proceeding to review a decision by the Department of Human Resources to revoke such a permit.

(f) A certificate shall be subject to revocation for the following failures, without limitation:

1. Failure to incur a project-specific capital expenditure, within the initial 12-month implementation period specified at 111-2-2-.02(6) and in the Certificate itself or within an extension implementation period granted by the Department, through initiation of substantial project above-ground construction or lease or purchase of the proposed equipment;

2. Failure to file the required Progress Report(s);

3. Failure to meet the conditions on the face of the Certificate; or

4. Failure to pay any penalty assessed pursuant to O.C.G.A. § 31-6-40.1.

(2) Sanctions.

(a) Any health care facility offering a new institutional health service without having obtained a Certificate of Need and which has not been previously licensed as a health care facility shall be denied a license to operate by the Department of Human Resources.

(b) In the event that a new institutional health service is knowingly offered or developed without having obtained a Certificate of Need as required by O.C.G.A. § 31-6 et. seq., or by these Rules, or the Certificate of Need for such service is revoked according to the provisions of 111-2-2-.05(1), a facility or person may be fined an

amount not to exceed \$5,000.00 per day up to 30 days, \$10,000.00 per day from 31 days through 60 days, and \$25,000.00 per day after 60 days for every each day that the violation of ~~this~~ these Rules and O.C.G.A. § 31-6 has existed and knowingly and willingly continues; provided however, that the expenditure or commitment of or incurring an obligation for the expenditure of funds to take or perform actions not subject to this chapter or to acquire, develop or prepare a health care facility site for which a Certificate of Need application is denied, shall not be a violation of this Chapter and shall not be subject to such a fine. The Commissioner or his designee shall determine, after notice and a hearing if requested, whether the fines provided in the Code section shall be levied.

(c) Any person who acquires a health care facility by stock or asset purchase, merger, consolidation, or other lawful means shall notify the Department of such acquisition, the date thereof, and the names and address of the acquiring person. Such notification shall be made in writing to the Commissioner or his designee within 45 days following the acquisition and the acquiring person may be fined by the Department in the amount of \$500.00 for each day that such notification is late.

(d) The Department may require that any applicant for a certificate of need commit to provide a specified amount of clinical health services to indigent or charity, Medicare, Medicaid, PeachCare, and similar patients as a condition for the grant of a Certificate of Need. A grantee or successor in interest of a Certificate of Need or authorization to operate under O.C.G.A. § 31-6 which violates such an agreement, whether made before or after July 1, 1991, shall be liable to the Department for a monetary penalty in the amount of the difference between the amount of services so agreed to be provided and the amount actually provided. Penalties authorized under this Code section shall be subject to the same notices and hearing for the levy of fines under 111-2-2-.05(2)(b).

(e) All hearings under this Section shall be in accordance with the "Georgia Administrative Procedure Act". Any person so penalized under this rule is entitled to judicial review, pursuant to O.C.G. A. §. 50-13 et seq.

(f) If the person assessed fails to pay the amount of the assessment to the Department within thirty (30) days after notice of assessment is postmarked to him, or within such longer period, not to exceed 90 days, as the Department may specify, the Department may institute a civil action to recover the amount of the assessment or may revoke the certificate of need. The Department may add reasonable interest to the assessment.

(g) For purposes of this Rule, the State of Georgia, acting by and through the Department or any other interested person, shall have standing in any court of competent jurisdiction to maintain an action for injunctive or other appropriate relief to enforce the provisions of this rule.

(3) Department's Right to Inspect and Audit. The Department or an authorized representative or employee designated by the Department shall have the right to inspect and audit any facility, site, location, book, document, paper, files, or other record of the holder of the certificate of need or letter of non-reviewability or other determination that is related to any project authorized by the certificate of need or letter of non-reviewability or other determination, in order to monitor and evaluate the person's compliance with the terms of issuance of the certificate of need or the letter of non-reviewability or other

determination. The Department shall have the authority to make public or private investigations or examinations inside or outside of the state of Georgia to determine whether all provisions of O.C.G.A. § 31-6-2 et. seq. or any other law, rule, regulation, or formal order relating to the provisions of O.C.G.A. § 31-6-40 in particular, has been violated. Such investigations may be initiated at any time in the discretion of the Department and may continue during the pendency of any action initiated by the Department pursuant to section (1)(a) of this rule. For the purpose of conducting any investigation or inspection pursuant to this subsection, the Department shall have te authority, upon providing reasonable notice, to require the production of any books, records, or other information related to any certificate of need issue.

Authority O.C.G.A. §§ 31-5A et seq. and 31-6 et seq.